IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 1078 of 1998

Between:

The Depot Manager APSRTC
Bodhan Depot , Nizamabad Dist.

..... PETITIONER

AND

1 A.Kakshaiah S/o.Bhoomaiah
Desai Pet Village & Post Banswada , Nizamabad Dist.
2 The Labour Court-II Rep by its Presiding Officer
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to May be pleased to issue any appropriate writ , order or direction particularly in the nature of writ of Certiorari calling for the records pertaining to the award of Labour Court-II Hyderabad in I.D.No.60/94
Dt: 7-1-97 and published on 25-6-97 and quash the same as being illegal, arbitrary and unjust and pass such other orders as may be deemed fit.

Counsel for the Petitioner: MR.V.T.M.Prasad

Counsel for the Respondent No.1: MRK.M.MAHENDER REDDY

Counsel for the Respondent No.2: G.P. for LABOUR

The Court made the following :

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 1078 of 1998

ORDER:

This Writ Petition is filed by the Depot Manager, AP State Road Transport Corporation, Bodhan Depot, Nizamabad District (Management), being aggrieved by the award passed by the Labour Court-II, Hyderabad, in I.D.No.60 of 1994, dated 07-01-1997, wherein the petition filed by the 1st respondent-workman, under Section 2-A(2) of the Industrial Disputes Act (for brevity 'the Act'), was answered in his favour and while reinstating the workman, the Labour Court-II also granted continuity of service with all other attendant benefits including 50% of the backwages.

2. According to the petitioner, the 1st respondent-workman was appointed as a temporary Conductor in 1980 and prior to his involvement in the present case of absenteeism, he was imposed with many punishments and he was terminated from service once, annual increments were deferred for five times. While so, the Deputy Superintendent of AP State Road Transport Corporation, Bodhan Depot, reported that the workman was absented to duties without any intimation or prior sanction of leave from 17-01-1992 onwards. In view of the same, a charge sheet was issued on 10-02-1992, framing the following charges:

> "For having absented for duties unauthorisedly from 17-01-1992 to till date which resulted in dislocation of services, besides loss of revenue to the Organisation and inconvenience to the traveling public."

3. Since the explanation submitted by the 1st respondent-workman was not satisfactory, a detailed domestic enquiry was ordered into. The Enquiry Officer submitted the report holding that the workman is found guilty of the charges. On the basis of the Enquiry Officer's Report, a show cause notice was issued to the 1st respondent-workman and after receiving the explanation, he was removed from service by an order dated 16-04-1992. Aggrieved by the same, the 1st respondent-workman had filed the appeal and review petition before the competent authority and the same were also rejected on 12-08-1992 and 26-10-1992 respectively. Having not satisfied with the same, 1st respondent-workman raised dispute before the Labour Court-II, Hyderabd, by filing a petition under Section 2-A(2) of the Act and the same was taken on file as I.D.No.60 of 1994.

4. According to the learned counsel for the petitioner, the Labour Court-II has not properly appreciated the facts and circumstances of the case and held that the charges are not proved and further while granting the relief of reinstatement with continuity of service and other benefits, also granted 50% of the backwages, which is arbitrary and illegal.

5. I have given my earnest consideration to the submissions made by the learned Counsel on either side and perused the award passed by the Labour Court-II and other material available on record.

6. At the out set, I am of the opinion that in the facts and circumstances of the case, though the Labour Court-II has not committed any illegality in directing the reinstatement of the 1st respondent-workman into service with continuity of service and other attendant benefits, but, the Labour Court-II has erred in granting the relief of 50% of the backwages. The 1st respondent-workman did not dispute as to the validity of the enquiry conducted by the petitioner-Management. Therefore, the Labour Court-II when proceeded to examine as to the proportionality of the

punishment, it was also supposed to appreciate the evidence and come to a proper conclusion as to the findings. Without giving any finding as to misconduct on the part of the workman, the Labour Court-II, could not have said that since the workman's wife fell sick due to 'Banamathi' and he had to take her for treatment to village like Ardapur in Nanded District, and from there she was taken to some other places for treatment and as such he could not attend the duties during the relevant period. But, the fact that nothing prevented the workman from intimating the department as to his absence and the reasons therefor were not at all considered, except saying that the absence of the workman for the relevant period was due to proper and justified cause and it cannot be said that he had committed any misconduct as such the punishment of removal was very harsh and disproportionate and therefore, directed the reinstatement of the 1st respondent-workman with other benefits as noticed above.

7. In these circumstances, I am of the opinion that there may not be any necessity for interfering with the award passed by the Labour Court-II so far as granting relief of reinstatement with continuity of service and other attendant benefits is concerned. But, absolutely neither there is any discussion nor any reasons furnished by the Labour Court-II in granting 50% of the back-wages.

8. Hence, I am of the considered view that as the Labour Court has exceeded in exercising its power vested under Section 11-A of the Act and granted such a relief of 50% of the backwages apart from reinstatement into service with continuity of service and other benefits, the award of the Labour Court-II is liable to be modified. In the result, the award of the Labour Court-II is modified to the following effect:

> "that the 1st respondent-workman is entitled for reinstatement with continuity of service and other attendant benefits but without any back-wages."

9. Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.

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July 20, 2005

KVR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Wednesday the Twentieth day of July , two thousand and five.

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ASSISTANT REGISTRAR

20th July, 2005

Kvr

// True Copy //

Section Officer

To

1. Presiding Officer, The Labour Court-II, Hyderabad.
2. The Depot Manager, APSRTAC, Bodham Depot, Nixamabad distraict.
3. Two CCs to G.P. for Labour, High Court of A.P.. Hyderabad.

4. Two C.D.Copies.